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In the Supreme Court of the United States

October Term, 1973

No. 73-728

CITY OF MIAMI, a municipal corporation,

Petitioner,

vs.

DAVID SPICY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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MIAMI REVIEW — 371-4853 — 377-3721

INDEX

	Page
OPINIONS BELOW	2
STATUTE CONFERRING JURISDICTION	2
GROUNDS ON WHICH JURISDICTION IS INVOKED	2
QUESTION PRESENTED FOR REVIEW	3
STATEMENT OF THE CASE	3-8
CONCLUSION	9
CERTIFICATE OF SERVICE	10
APPENDIX—	
EXHIBIT 1 — ORDER DENYING PETITION FOR REHEARING	App. 1-2
EXHIBIT 2 — DECISION AND OPINION OF THE SUPREME COURT OF FLORIDA ON REHEARING GRANTED	App. 3-10
EXHIBIT 3 — DECISION AND OPINION OF THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT	App. 11-14
EXHIBIT 4 — PETITION FOR REHEARING FILED ON BEHALF OF THE CITY OF MIAMI IN THE SUPREME COURT OF FLORIDA	App. 15-21

CASES CITED

	Page
Cambist Films, Inc. v. Duggan, USCA 3rd, March 13, 1973, 475 F.2d 887	8
City of Miami v. Spicy, 266 So.2d 101 (Fla.)	2
Hill v. Rowland, USCA 4th, October 3, 1972, 474 F.2d 1374, 1377	8
Pierson v. Ray, 386 US 549, 18 L.Ed 2d 288, 87 S.Ct. 1213	8

CONSTITUTIONAL PROVISION

Fourteenth Amendment To The Constitution of the United States	7

STATUTORY PROVISION

Title 42, United States Code § 1983	8
Title 28, United States Code § 1257(3)	2

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NO. _____

CITY OF MIAMI, a
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Petitioner,

vs.

DAVID SPICY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Florida entered in the above entitled cause on October 3, 1973, finalizing its earlier opinion on Rehearing Granted June 27, 1973.

OPINIONS BELOW

1. The Opinion of the Supreme Court of Florida not yet officially reported, dated October 3, 1973, denying the City of Miami's Petition for Rehearing of its earlier Order, hereto attached, marked Exhibit #1.

2. The Opinion of the Supreme Court of Florida, dated June 27, 1973, and not as yet officially reported, which on Rehearing Granted, reversed the decision of the Third District Court of Appeals, hereto attached, marked Exhibit #2.

3. Opinion of the Third District Court of Appeals dated August 8, 1972, rehearing denied September 19, 1972, and reported at 266 So.2d 101, which directed a verdict for the Defendant, City of Miami, hereto attached, marked Exhibit #3.

STATUTE CONFERRING JURISDICTION

Jurisdiction is conferred by Title 28, U.S. Code, §1257(3), granting certiorari where any right, privilege or immunity is claimed under the Constitution.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The Supreme Court of Florida, by its Opinion denied due process and equal protection of the laws to the City of Miami by holding the City liable for the tort of another.

QUESTION PRESENTED FOR REVIEW

WHETHER THE SUPREME COURT OF FLORIDA DENIED DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BY ITS DECISION DENYING REHEARING AND ITS DECISION STYLED ON REHEARING GRANTED, HOLDING THE CITY OF MIAMI LEGALLY LIABLE FOR THE TORT OF A THIRD PARTY, I.E. A DADE COUNTY SEPARATE ENTITY HOSPITAL FACILITY.

STATEMENT OF THE CASE

Proceedings Below

The action involved is a survival action for false imprisonment brought by the administrator of an estate. City of Miami police found Decedent in a dazed condition with a head injury. He appeared to be drunk. When coworkers of Decedent refused to take him home, Decedent was placed in custody and sent to Jackson Memorial Hospital for an examination. The arresting officer filled out both an examination report and an arrest report for drunkenness.

The hospital intern who examined Decedent found a negative neurological indication but felt that Decedent "had been drinking to the extent that he had a staggering gait." Decedent admitted to the doctor that he had been drinking.

After the examination, Decedent was released to the Police Department and taken to jail. The next day, his condition worsened, and he was returned to Jackson Memorial Hospital, where he later died. An autopsy report showed a skull fracture and other injuries which caused his death.

On these facts, the Third District Court of Appeals held that reasonable men could not differ that the police officer acted reasonably in arresting the Decedent for the misdemeanor of drunkenness. On the basis, the Court reversed a lower court judgment on a jury verdict in favor of the Plaintiff and ordered that a directed verdict be entered in favor of the City of Miami.

The Supreme Court of Florida, on rehearing granted, overturned the decision of the Third District Court of Appeals and reinstated the trial court judgment in favor of the administrator.

In so deciding, the Supreme Court held that the police based the required "substantial reason to believe the plaintiff was committing a misdemeanor" (public drunkenness) upon the intern's later determination as to whether Decedent was in fact drunk. The Court then held that the officer could not do this but must exercise his own judgment.

A Petition for Rehearing on behalf of the City of Miami was timely filed.

The contention was raised in this Petition for Rehearing that the Supreme Court of Florida violated the right of the City of Miami to due process of law under

the Fourteenth Amendment to the United States Constitution by making the City of Miami responsible for the negligence or fault of a third party.

Pointed out in the Petition was the following:

1. Any false imprisonment was committed by the hospital intern who transferred the Deceased from the hospital to the jail.

2. If the intern found the Decedent neither drunk nor injured, he should have released the Decedent.

3. The police officer merely sent the Deceased to the hospital by ambulance with the instruction to send the Deceased to jail if he was found to be drunk.

The Petition further contended that the Court denied to individual police officers as well as the City of Miami equal protection of the laws and due process of law guaranteed by the United States Constitution because its opinion made police officers responsible for a standard of care which is impossible to perform by requiring the following of police officers:

> (1) Each police officer making an arrest to be a judge of possible latent medical problems; and
>
> (2) Police officers are the guarantors of the life, health and medical safety of arrested persons who may later have medical problems.

Said Petition is attached hereto and marked Exhibit #4.

Thus, the Federal questions presented to this Court for review were raised in the Petition for Rehearing filed on behalf of the City of Miami following the decision and opinion of the Supreme Court of Florida filed June 27, 1973 in which the Court quashed the decision of the Third District Court of Appeal. The substance of the opinion of the Florida Supreme Court generated these Federal constitutional questions.

The Florida Supreme Court passed upon the questions by denying the Petition for Rehearing on October 3, 1973.

As was pointed out to the Florida Supreme Court in the Petition for Rehearing that court made the City of Miami responsible for the negligence of the hospital intern because it was the hospital intern who dispatched the decedent to the City of Miami jail.

Indeed, the quotation of the evidence by the Florida Supreme Court clearly shows that if there were false imprisonment, the false imprisonment was the act of the hospital intern and not the arresting officer.

In Footnote #2 of the opinion of the Supreme Court, the following testimony of the police officer is quoted:

> "A. . . . . If this man was found, through the doctor, to be injured, then the arrest report could be torn up. If, through the doctor, he was found to be drunk, then he could be sent to the station. . . . . I sent him by ambulance (to the Hospital)."

This testimony quoted by the Florida Supreme Court in its opinion makes it clear that all the police officers did was to send the deceased to the hospital **by ambulance.** The instruction of the police officer was to send the decedent to the station **if he was found to be drunk.** Obviously, if he was not found to be drunk he should have been kept in the hospital or released.

Thus, the Florida Supreme Court, by making the City of Miami responsible for the negligence of the hospital intern, has violated the constitutional right of the City of Miami to the protection afforded it by the due process clause of the U. S. Constitution.

The pertinent portion of Amendment XIV to the U. S. Constitution states as follows:

> ". . . nor shall any State deprive any person of life, liberty, or property without due process of law; . . ."

Obviously, the Florida Supreme Court in making the City of Miami responsible for the negligence or fault of another has deprived it of property without due process of law.

The Florida Supreme Court, in addition, by its opinion made police officers responsible for an impossible standard of care by requiring police officers in making arrests to be the following:

1. Judges of possible latent medical problems;

2. Guarantors of the life, health and medical safety of arrested persons who may later have medical problems.

This court, in Pierson v. Ray, 386 U.S. 549, 18 L. Ed 2d 288, 87 S.Ct. 1213, held that good faith and probable cause is available to police officers in a common-law action for false arrest and imprisonment as well as being available to them in an action under Section 1983 of Title 42 of the U. S. Code.

In the case of **Hill v. Rowland,** USCA 4th, October 3, 1972, 474 F.2d 1374, 1377, the Fourth Circuit Court of Appeals held in a civil rights action the test of liability for making a warrantless arrest was not an objective test of probable cause but rather a subjective test of the reasonably good faith of officers in the legality of the arrest.

In **Cambist Films, Inc. v. Duggan,** USCA 3rd, March 13, 1973, 475 F.2d 887, the court stated as follows:

> "Police officers are not expected to have a complete knowledge of the intricacies of case law; rather they are only expected to act in accordance with the facts and circumstances of the given situation with which they are confronted."

Thus, both the Supreme Court and the Federal appellate courts held that police officers are held merely to a reasonable standard of care in making arrests on the basis of a partly subjective test.

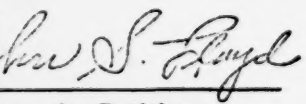
The opinion of the Florida Supreme Court, therefore, flies directly in the face of these decisions and violates the due process standards which have been established in **Pierson v. Ray, supra.**

CONCLUSION

It is respectfully submitted that it is clearly demonstrated that the Supreme Court of Florida, in its Opinion on Rehearing Granted, has clearly denied due process to the City of Miami by holding it responsible for the tort of a third person, i.e. the Dade County Hospital facility, and that the Petition for Certiorari should be granted, and full argument afforded for this denial by the Supreme Court of equal protection of the laws to the City of Miami.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, JOHN S. LLOYD, Counsel for Petitioner and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of Nov., 1973, I served a copy of the foregoing Petition for Writ of Certiorari on the Respondent by mailing a copy thereof in a duly addressed envelope to THEODORE M. TRUSHIN, Esq., 420 Lincoln Road, Miami Beach, Florida 33139.

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